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MINUTES OF THE HEARING ON THE PETITION FOR

HEARING # 11-12

REVIEW , 50 POPE ROAD

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, October 3, 2011 at 7:30 PM on the petition of R. Douglas Shaw, GS Holdings LLC for a PETITION FOR REVIEW to review the refusal of the Zoning Enforcement Officer to allow a building permit to construct a large addition around an existing single family dwelling per Zoning Bylaw Section 8.3.6. The subject property is located at 50 Pope Road. Map F-5/Parcel 49.

Present at the hearing was Ken Kozik, Chairman; Jonathan Wagner, Member; Richard Fallon, Alternate Member; Scott Mutch, Zoning Enforcement Officer; and Cheryl Frazier, Board of Appeals Secretary. Also present at the hearing was the petitioner, Douglas Shaw and his Attorney Sherrill Gould.

Ken Kozik opened the hearing, read the contents of the file which included two letters from Scott Mutch, Zoning Enforcement Officer with the first one dated July 22, 2011 and the second one dated September 6, 2011. The file also included a letter from an abutter in objection to the petition.

Ken began by asking Scott Mutch, Zoning Enforcement Officer if he could explain his letters contained in the file. Scott began by saying the first letter dated July 22nd was based on the original building permit application which resulted from the initial review of the permit. Essentially the property is in an R-8 residential zoning district and the lot itself is non-conforming for two reasons. You need 80,000 square feet and this lot has 24,627. It's also non-conforming with regards to the frontage where 200 square feet is required and the lot in question has 166.7 square feet. It was unclear from the building permit application what was happening so he went out to the site and took some photographs. When he took the photographs he discovered that work was already being done on the property. He said his view of the project is that section 8.3.6 of the bylaw allows for the tear down of the existing structure on a non-conforming lot but you're limited to the FAR to build what was there previously. The existing structure a one story Cape Cod home built in 1955 was roughly 1142 square feet. The new proposed structure will be in excess of 3,000 square feet which is significantly larger. Scott believes a portion of the structure may be saved but he believes the intent was to circumvent Section 8.3.6 of the bylaw which is why it was denied. Based on the appeal to the BOA challenging his determination there's a 30 day window, the applicant applied outside of the 30 day window, therefore it couldn't be accepted so the plans were slightly revised and the new memo of September 6th was issued. Ken Kozik asked what the difference was between the two plans and Scott said the family room was made slightly smaller. Richard Fallon had a question for Scott about the most recent letter. He didn't understand the second paragraph on the last page of the most recent memo of September 6th. He asked Scott to explain what he meant by that. Scott said section 8.3.6 contemplates a voluntary complete demolition of the structure and building of a new structure. It seems like the existing structure or a portion of it is going to be preserved and a new structure built around it so you're not getting a complete teardown. Richard Fallon asked what would be the alternative. His question is if it's not razed and considered an alteration

would they apply Section 8.3.2 of the Zoning bylaw. Ken and Scott agreed that Section 8.3.2 would apply if they weren't applying 8.3.6.

Sherrill Gould, Attorney for the petitioner introduced herself and the petitioner Douglas Shaw. She stated that they have brought two matters before the Board tonight. One is the appeal from the Zoning Enforcement Officer's decision and the second is a request for a Special Permit under Chapter 40A §6. She realizes they are only calling on the first hearing but she thinks the evidence of the defense will be the same in both. The position of the applicant is that he has no intention of razing the structure and has made it very clear in the application process that he has taken off the roof with the verbal approval of the Building Inspector and realizes he will need a demolition permit if he demolishes the whole thing. It is their intention to gut it, keeping the four existing walls and the framework and adding a garage on one side and a family room on the other side. Under 40A Section 6 it is their position that that is a change, extension or alteration of a pre-existing non-conformity and under the Zoning Bylaw Section 8.3.2 it states that that is permitted provided that the Board of Appeals finds that the proposed use is in harmony with the character of the neighborhood and any new non-conformities are not more detrimental to the neighborhood. She brought up a recent case that was just decided less than a month ago in the case of The Gale family vs. The Board of Appeals in Gloucester and in that case the lot did not conform to the zoning ordinance with respect to lot area precisely as this one and it contained a small seasonal cottage. In that case the cottage did not conform to front, side and rear setbacks and in this case the house in question does conform to the front side and rear setbacks and the new extension or alteration will conform to front side and rear setback also. She proceeded to read the decision in the Gloucester case. Ken asked if the lot in the Gloucester case was non-conforming. She said the overall size was non-conforming. She said that it is their position that Chapter 40A intended to provide for relief for any homes or homeowners who find themselves on non-conforming lots. It is the intent of the statute that you don't want to increase the non-conformity, but it's their contention that the zoning bylaw intended for that to make neighborhoods consistent and not more detrimental to the neighborhood. But it wasn't the intent of the Legislature under Chapter 40A § 6 or in the Zoning Bylaw for the Town of Acton that you prevent an existing house from having a legitimate extension and bringing it up to speed and maybe up to the character of the neighborhood. Ken added that the current Zoning Bylaw doesn't prevent him from building something that has the same floor area ratio and two years later expanding upon that so it doesn't prevent it.

Ken Kozik asked Sherrill Gould to make her argument at hand. She said she doesn't think the application of 8.3.6 was correct in this regard because they are not razing the structure they are simply extending it, adding on to it, and making a total renovation of the structure. They are continuing with the existing footprint and adding a wing on each side which is truly an addition, extension or alteration.

Ken asked Jon and Rich for comments. Jon Wagner felt that the key determination here is whether or not this is a razing and a rebuilding as opposed to a change, extension or alteration. Jon asked Scott what his rationale was in reaching his conclusion if this was a razing or rebuilding. Scott said when they went out to the site and photographed it, a lot of the structure was already gone and without any demolition plans submitted as part of the permit application there was no way of telling what was going to happen, so from their perspective it was a razing of the home.

Richard Fallon's question was how large the new structure would be. Scott said the total square footage is approximately 80' x 40'. Rich Fallon asked how many walls would remain standing. Douglas Shaw, petitioner introduced himself and stated that three walls would remain and one would be removed to add the family room. Ken asked what the proposed height is. The height will be 32' feet which is in compliance with the zoning by-law. Sherrill Gould added that based on the letter that was received this

evening from an abutter it is the applicant's intention that this be a two story structure and he has no intention of building a three story structure. They don't have any objection to working with the building inspector or the neighbors to bring the roof height down. The foundation is going to stay and the garage and family room will be on a slab.

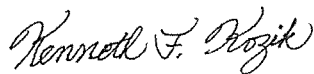
Tom Lemire, abutter of 5 Braebrook Road had a couple of questions for the Board. His questions were answered by the petitioner and his attorney. Another abutter emailed a comment to the Board stating they were opposed to the petitioner's plans to increase the size of the current structure.

Ken made a motion to close hearing 11-12. Jonathan Wagner made the motion. Richard Fallon seconded the motion. The hearing was closed.

Ken asked for a motion to overturn the Zoning Enforcement Officer. Jon so moved and Richard Fallon seconded the motion.

The Board voted **UNANIMOUSLY 3-0 to UPHOLD** the Zoning Enforcement Officer's Decision. Richard Fallon to write the decision.

Respectfully submitted,



Kenneth F. Kozik

Chairman, Board of Appeals



Cheryl Frazier

Secretary, Board of Appeals